IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2897 OF 2005
ALONG WITH
CHAMBER SUMMONS NO.105 OF 2006

Harbour Water Suppliers Co.Pvt.Ltd. & anr. Petitioners
vs.
Board of Trustees of Port of Mumbai & ors. Respondents
And
Raj Transport & Trading Company Intervener

Mr.D.H.Mehta i/b.ALN Khatri & Co. for the petitioners.

Mr.U.J.Makhija i/b.M/s.Motiwala & Co. for respondents 1 to 3.

Mr.H.N.Thakore i/b.M/s.Thakore Jariwala & Associates for Intervener.

Mr.Bomi Patel with Mr.R.H.Mirza for the Applicant.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 24th November, 2006

P.C.

The petitioners are carrying on business of supplying water to the ships, vessels and barges in Mumbai Harbour. By this writ petition, the petitioners have challenged a circular bearing reference no.PHB/29-35 dated 11th January 2005, issued by respondent no.4, in so far as, it allows the bacteriological test to be carried out by private water supplying agencies, themselves and further alleging that it dilutes the mandatory requirement of the test to be

carried out by the respondents themselves.

2. Respondent no.4 is the Port Health Officer of the Port Health Organization, a body constituted by the Union of India for the purposes of regulating the provisions concerning upkeep and maintenance of hygiene and health of the persons employed in the activities at the ports, and ships in Harbour and in stream.

3. The impugned circular has been in force since 11th January 2005. Though this petition was filed on 24th November 2005, the petitioners were unable to pursue the court to pass any ad-interim order as prayed.

4. Respondents 1, 2 and 3 by an affidavit dated 14th February 2006 resisted the case of the petitioners. Other Harbour Water Suppliers, by an intervention application, through chamber summons no.105/2006 also resisted the same prayers, as in pursuance to the impugned circular they have been carrying out the business of supplying the water.

5. After hearing the parties, we are of the opinion that the petitioners have failed to make out a case to interfere with the decision taken by the respondents to carry out the water testing by the private parties themselves. The circular itself,

directs, that the test should be carried out by the B.M.C. and a report be obtained from the B.M.C., as water suppliers are expected to supply potable water from the municipal taps only. The certificate from B.M.C. is also necessary to be obtained as regards to the fitness of water supplied by B.M.C. We find there is nothing wrong, in the facts and circumstances of the case, specially when the authorities, after considering the various material aspects, decided to permit the above water testing through the parties. It cannot be said that such testing is to be done by the private parties themselves, as alleged.

6. The challenge, as raised by the petitioners in reference to only paragraph 2 of the circular, has no force in view of the circular's first and last paragraphs which requires that "All water barge owners and the shipping agents are informed that you are supposed to supply fit and potable chlorinated water or drinking purpose BMC-water to ship in Mumbai Harbour" and "Surprise checking of barges and samples will be drawn by this office representative and will send laboratory directly and the charges will be borne by owners of the barges.". The second paragraph of the said circular also provides a check with an intention that the concerned water barges owners and/or the

shipping agents should supply fit and potable chlorinated water for drinking purposes and for that it has been directed to carry out the bacteriological test from B.M.C. and to submit a necessary report every month. It has been provided further that the periodical inspection report will be issued to the barges by this office on receiving laboratory report certifying the potability of water.

7. Considering the above contents of the circular, we are of the view that the respondents have taken all necessary precautions and steps to see that such water suppliers should supply potable and fresh water. There is nothing wrong in the policy and/or method and/or procedure as adopted by the respondents. The petitioners challenge is only to a part of the circular. As referred to above, there is no sufficient material to consider the allegations of connivance or malafide as raised against the respondents. Mere allegations are not sufficient. There is no material to justify the allegations of malafide or connivance. There is no question of any breach of principles of natural justice. The petitioners have also not established that any fundamental right is affected by the part of the circular dated 11th January 2005 which is under challenge. The petitioners grievance against the respondents, in the present case, is difficult to

accept. The petitioners grievance, if any, against the individual suppliers or competitors cannot be decided without joining such suppliers with a particular in support of such allegations about supply of contaminated water or manipulated water test reports. The respondents are under obligation to see that drinking water supplied to the ships should be as per the standard recommended by the WHO, and for that the test as provided, if complied with will act as a total check and control. There is no reason to interfere with the said circular and the policy decision taken by the respondents, at least in the present case. In the circumstances, there is no force in the submission that para 2 of the circular dated 11th January 2005 dilutes the mandatory requirement and/or bad in law.

8. For the above reason, the present petition is therefore dismissed in limine. There shall be no order as to costs.

9. In view of dismissal of petition, chamber summons no.105/2006 also stands dismissed.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)